

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

V.

KIMSEING LE,

Defendant.

CIVIL ACTION NO. 5:18-CR-2 (MTT)

ORDER

Defendant Kimseing Le moved to suppress currency, firearms, and drugs obtained from a police search of a residence. Doc. 169. The Court held a hearing on that motion on November 29, 2018. Doc. 180. Le was given until January 17, 2019, to file a brief but did not do so. Docs. 185 at 60:24-61:4; 189. For the following reasons, that motion (Doc. 169) is **DENIED**.

I. FINDINGS OF FACT

On February 15, 2018, law enforcement officers arrived at 1324 Liberty Parkway Northwest, a townhouse residence, to execute an arrest warrant for Defendant Le. Docs. 185 at 25:16-20, 31:11-32:4; 169 at 1. While there, the officers conducted a search of the residence. *Id.* at 25:14-27:2. At the hearing, Special Agent Martin Highsmith, of the Federal Bureau of Investigation, described the search. *Id.* at 23:20-24:16. According to Highsmith, Le was residing in a townhouse residence and was arrested in or near the garage. *Id.* at 25:16-20. While other agents were arresting Le, Highsmith conducted a safety check of the residence and spoke with Le's girlfriend,

Taing, who told them the lease for the residence was in her name and consented to a search of the residence. *Id.* at 25:21-26:5. Highsmith identified, and the Court admitted with no objection, a Consent to Search Form which Taing had signed. *Id.* at 26:14-21. Highsmith testified he had told Taing she was not under arrest and did not have to consent to the search. *Id.* at 43:23-45:5, 47:11-48:10. Highsmith testified he was not aware of any objections to the search by Le. *Id.* at 28:19-20, 48:17-19. Le testified he resided with Taing and sometimes helped pay rent. *Id.* at 52:6-22. He also testified he never objected to the search of the residence. *Id.* at 58:2-7.

The Court finds that the Government has established by a preponderance of the evidence the following: (1) Taing voluntarily consented to the search of the residence; (2) the law enforcement personnel searching the residence reasonably believed Taing had the authority to consent; and (3) Defendant Le did not object to the search.

II. MOTION TO SUPPRESS STANDARD

The individual moving for suppression of evidence bears the initial burden of persuading the court, through specific factual allegations and supporting evidence, that the evidence should be suppressed. *United States v. de la Fuente*, 548 F.2d 528, 533 (5th Cir. 1977).¹ Once the movant establishes a basis for the motion, the burden then shifts to the Government to prove by a preponderance of the evidence that the search or seizure of evidence was legally and factually justified. *United States v. Freire*, 710 F.2d 1515, 1519 (11th Cir. 1983) (citation omitted) (“Upon a motion to suppress evidence garnered through a warrantless search and seizure, the burden of proof as to the reasonableness of the search rests with the prosecution. The [g]overnment must

¹ The Eleventh Circuit Court of Appeals adopted Fifth Circuit Court of Appeals decisions prior to October 1, 1981 as binding precedent in *Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981).

demonstrate that the challenged action falls within one of the recognized exceptions to the warrant requirement, thereby rendering it reasonable within the meaning of the [F]ourth [A]mendment.”); *United States v. Matlock*, 415 U.S. 164, 177 n.14 (1974) (citation omitted) (“[T]he controlling burden of proof at suppression hearings should impose no greater burden than proof by a preponderance of the evidence.”).

III. DISCUSSION

Here, the Government has met its burden of demonstrating the search was reasonable. The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures,” but “contains no provision expressly precluding the use of evidence obtained in violation of its commands.” U.S. CONST. amend. IV; *Arizona v. Evans*, 514 U.S. 1, 10 (1995). As a result, courts apply the exclusionary rule, “a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect.” *United States v. Calandra*, 414 U.S. 338, 348 (1974); see also *Franks v. Delaware*, 438 U.S. 154, 171 (1978) (holding that evidence seized as a result of an illegal search may not be used by the government in a subsequent criminal prosecution). Voluntary consent is an exception to the general rule that officers must obtain a warrant before conducting a search. *Illinois v. Rodriguez*, 497 U.S. 177, 181 (1990); see also *Schneckloth v. Bustamonte*, 412 U.S. 218, 225 (1973) (holding that if an officer conducts a search pursuant to voluntary consent, no warrant is necessary).

The Government contends that because Taing consented to the search and Le did not object, the search was valid. Doc. 175 at 2; see *Rodriguez*, 497 U.S. at 181-84; *Schneckloth v. Bustamonte*, 412 U.S. at 225-28. Based on the record adduced at the

hearing and on its findings of fact, the Court agrees that the search was undertaken pursuant to Taing's voluntary consent and did not, therefore, violate Defendant Le's Fourth Amendment rights. When requesting time to submit a supplemental brief, Le's counsel stated there might be a "*Randolph* issue" with the search. Doc. 185 at 60:15-20. In *Georgia v. Randolph*, the Supreme Court held that "a warrantless search of a shared dwelling for evidence over the express refusal of consent by a physically present resident cannot be justified as reasonable as to him on the basis of consent given to the police by another resident." 547 U.S. 103, 120 (2006). But Le did not submit a brief explaining the basis for his *Randolph* argument, and there is no evidence that he refused to consent. See generally Doc. 185. Rather, Le testified the officers did not ask for his consent and that he did not object to the search of the townhouse.² *Id.* at 58:2-7. There is not, therefore, a "*Randolph* issue" with the challenged search even if Le was a resident of the townhouse.

IV. CONCLUSION

For the reasons stated, Defendant Le's motion to suppress (Doc. 169) is **DENIED.**

SO ORDERED, this 19th day of February, 2019.

S/ Marc T. Treadwell
MARC T. TREADWELL, JUDGE
UNITED STATES DISTRICT COURT

² Le did consent orally to the search of his car. Doc. 185 at 58:8-10.